

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM BENGEYFIELD and BETTY
BENGEYFIELD,

UNPUBLISHED
August 25, 2005

Plaintiffs-Appellants,

v

FIRST AMERICAN TITLE INSURANCE
COMPANY,

No. 262039
Oakland Circuit Court
LC No. 04-059576-CK

Defendant-Appellee.

Before: Zahra, P.J., and Cavanagh and Owens, JJ

MEMORANDUM.

Plaintiffs appeal as of right from a circuit court order granting judgment in favor of defendant pursuant to MCR 2.116(I)(2). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs purchased property by land contract and obtained title insurance from defendant. Plaintiffs later created a trust of which they were trustees, and assigned their interest under the land contract to the trust. After the contract was paid off, the vendors conveyed the property to the trust by warranty deed. Plaintiffs filed this action for coverage under the policy relating to an easement over the land. Defendant denied coverage on the ground that plaintiffs did not have an interest in the property. The trial court agreed and dismissed the action.

We review a trial court's ruling on a motion for summary disposition de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). The construction and interpretation of an insurance policy and whether the policy language is ambiguous are questions of law that we also review de novo. *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 353; 596 NW2d 190 (1999).

Plaintiffs are insureds as defined under the policy. The policy provides coverage to "an insured so long as such insured retains an estate or interest in the land" We find persuasive the analysis of identical policy language in *General Medicine, PC v Metropolitan Title Co*, unpublished opinion per curiam of the Court of Appeals, issued March 2, 2001 (Docket No. 216012), and adopt its holding that this language "require[s] an ownership or title interest in order for the policy to remain in effect." *Genesis Center, PLC v Blue Cross & Blue Shield of Michigan*, 243 Mich App 692, 696; 625 NW2d 37 (2000).

When plaintiffs assigned the land contract to the trust, they conveyed their interest under the contract plus “all right, title and interest accrued” thereunder. Thereafter, the sellers issued a warranty deed to the trust. The deed conveyed “the usual covenants of title, including the covenant of seisin and of good right to convey, the covenant of quiet enjoyment, the covenant against encumbrances, and the covenant to warrant and defend the title.” *McCausey v Oliver*, 253 Mich App 703, 707; 660 NW2d 337 (2002). Because plaintiffs conveyed all title and interest acquired by the land contract to the trust and the land contract vendors later conveyed title to the trust, they did not have an interest in the land.

We reject any claim that plaintiffs, in their capacity as trustees, succeeded to the interest of the insureds by operation of law. The insureds’ interest did not pass to the trust upon creation of the trust, but passed by the assignment issued by the insureds and by the deed issued by the vendors. See *Pioneer Nat’l Title Ins Co v Child, Inc*, 401 A2d 68, 70-71 (Del, 1979); *Butera v Attorneys’ Title Guaranty Fund, Inc*, 321 Ill App 3d 601, 606; 747 NE2d 949 (2001).

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Donald S. Owens